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Attorneys for Defendant

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AMERICAN FEDERATION OF
MUSICIANS OF THE UNITED
STATES AND CANADA

Plaintiff,

v.

PARAMOUNT PICTURES
CORPORATION

Defendant.

CASE NO.:

2:15-cv-04302-DMG(PJWx)

STIPULATED PROTECTIVE
ORDER

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the

1 procedures that must be followed and the standards that will be applied when a
2 party seeks permission from the court to file material under seal.

3 B. GOOD CAUSE STATEMENT
4

5 Discovery in this action is likely to involve commercial, financial, and other
6 proprietary and confidential materials and information for which special protection
7 from public disclosure and from use for any purpose other than the prosecution of
8 this action is warranted. Such proprietary and confidential materials and
9 information are likely to consist of, among other things, confidential business or
10 financial information, information regarding confidential business practices,
11 information (including intellectual property) regarding the development,
12 production, scoring, and distribution of theatrical motion pictures—including
13 information that might implicate the privacy rights of third parties—or other
14 confidential information otherwise generally unavailable to the public, or which
15 may be privileged or otherwise protected from disclosure under state or federal
16 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
17 flow of information, to facilitate the prompt resolution of disputes over
18 confidentiality of discovery materials, to adequately protect information the parties
19 are entitled to keep confidential, to ensure that the parties are permitted reasonable
20 necessary uses of such material in preparation for and in the conduct of trial, to
21 address their handling at the end of the litigation, and serve the ends of justice, a
22 protective order for such information is justified in this matter. It is the intent of
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1 the parties that information will not be designated as confidential for tactical
2 reasons and that nothing be so designated without a good faith belief that it has
3 been maintained in a confidential, non-public manner, and there is good cause why
4 it should not be part of the public record of this case.
5

6 2. DEFINITIONS

7
8 2.1 Action: The instant litigation, styled *AFM v. Paramount Pictures*
9 *Corporation*, 2:15-cv-04302-DMG-PJW.

10 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
11 information or items under this Order.
12

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
14 it is generated, stored or maintained) or tangible things that qualify for
15 protection under Federal Rule of Civil Procedure 26(c), and as specified
16 above in the Good Cause Statement.
17

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
19 support staff).
20

21 2.5 Designating Party: a Party or Non-Party that designates information or
22 items that it produces in disclosures or in responses to discovery as
23 “CONFIDENTIAL.”
24

25 2.6 Disclosure or Discovery Material: all items or information, regardless of
26 the medium or manner in which it is generated, stored, or maintained
27 (including, among other things, testimony, transcripts, and tangible things),
28

1 that are produced or generated in disclosures or responses to discovery in
2 this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter
4
5 pertinent to the litigation who has been retained by a Party or its counsel to
6 serve as an expert witness or as a consultant in this Action.

7 2.8 House Counsel: attorneys who are employees of a party to this Action.
8
9 House Counsel does not include Outside Counsel of Record or any other
10 outside counsel.

11 2.9 Non-Party: any natural person, partnership, corporation, association, or
12
13 other legal entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
15
16 this Action but are retained to represent or advise a party to this Action and
17 have appeared in this Action on behalf of that party or are affiliated with a
18 law firm which has appeared on behalf of that party, and includes support
19 staff.

20
21 2.11 Party: any party to this Action, including all of its officers, directors,
22
23 employees, consultants, retained experts, and Outside Counsel of Record
24 (and their support staffs).

25 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
26
27 Discovery Material in this Action.
28

1 2.13 Professional Vendors: persons or entities that provide litigation support
 2 services (e.g., photocopying, videotaping, translating, preparing exhibits or
 3 demonstrations, and organizing, storing, or retrieving data in any form or
 4 medium) and their employees and subcontractors.

6 2.14 Protected Material: any Disclosure or Discovery Material that is
 7 designated as “CONFIDENTIAL.”

9 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
 10 from a Producing Party.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only
 13 Protected Material (as defined above), but also (1) any information copied or
 14 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 15 compilations of Protected Material; and (3) any testimony, conversations, or
 16 presentations by Parties or their Counsel that might reveal Protected Material.
 17 presentations by Parties or their Counsel that might reveal Protected Material.

18 Any use of Protected Material at trial shall be governed by the orders of the
 19 trial judge. This Order does not govern the use of Protected Material at trial.
 20 trial judge. This Order does not govern the use of Protected Material at trial.

22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations
 24 imposed by this Order shall remain in effect until a Designating Party agrees
 25 otherwise in writing or a court order otherwise directs. Final disposition shall be
 26 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
 27 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
 28 deemed to be the later of (1) dismissal of all claims and defenses in this Action,

1 with or without prejudice; and (2) final judgment herein after the completion and
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
3 including the time limits for filing any motions or applications for extension of
4 time pursuant to applicable law.
5

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection.

8
9 Each Party or Non-Party that designates information or items for protection under
10 this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. The Designating Party must designate for
12 protection only those parts of material, documents, items, or oral or written
13 communications that qualify so that other portions of the material, documents,
14 items, or communications for which protection is not warranted are not swept
15 unjustifiably within the ambit of this Order.
16
17

18 Mass, indiscriminate, or routinized designations are prohibited. Designations
19 that are shown to be clearly unjustified or that have been made for an improper
20 purpose (e.g., to unnecessarily encumber the case development process or to
21 impose unnecessary expenses and burdens on other parties) may expose the
22 Designating Party to sanctions.
23
24

25 If it comes to a Designating Party's attention that information or items that it
26 designated for protection do not qualify for protection, that Designating Party must
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.
28

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.
6

7 Designation in conformity with this Order requires:
8

9 (a) for information in documentary form (e.g., paper or electronic
10 documents, but excluding transcripts of depositions or other pretrial or trial
11 proceedings), that the Producing Party affix at a minimum, the legend
12 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
13 contains protected material. If only a portion or portions of the material on a page
14 qualifies for protection, the Producing Party also must clearly identify the
15 protected portion(s) (e.g., by making appropriate markings in the margins).
16
17

18 A Party or Non-Party that makes original documents available for inspection
19 need not designate them for protection until after the inspecting Party has indicated
20 which documents it would like copied and produced. During the inspection and
21 before the designation, all of the material made available for inspection shall be
22 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
23 documents it wants copied and produced, the Producing Party must determine
24 which documents, or portions thereof, qualify for protection under this Order.
25 Then, before producing the specified documents, the Producing Party must affix
26
27
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1 the “CONFIDENTIAL legend” to each page that contains Protected Material. If
2 only a portion or portions of the material on a page qualifies for protection, the
3 Producing Party also must clearly identify the protected portion(s) (e.g., by making
4 appropriate markings in the margins).
5

6 (b) for testimony given in depositions that the Designating Party identify the
7 Disclosure or Discovery Material on the record, before the close of the deposition
8 all protected testimony.
9

10 (c) for information produced in some form other than documentary and for
11 any other tangible items, that the Producing Party affix in a prominent place on the
12 exterior of the container or containers in which the information is stored the legend
13 “CONFIDENTIAL.” If only a portion or portions of the information warrants
14 protection, the Producing Party, to the extent practicable, shall identify the
15 protected portion(s).
16
17

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive
20 the Designating Party’s right to secure protection under this Order for such
21 material. Upon timely correction of a designation, the Receiving Party must make
22 reasonable efforts to assure that the material is treated in accordance with the
23 provisions of this Order.
24
25

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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1 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
2 designation of confidentiality at any time that is consistent with the Court's
3 Scheduling Order.

4
5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37.1 et seq.

7
8 6.3 The burden of persuasion in any such challenge proceeding shall be on
9 the Designating Party. Frivolous challenges, and those made for an improper
10 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
11 parties) may expose the Challenging Party to sanctions. Unless the Designating
12 Party has waived or withdrawn the confidentiality designation, all parties shall
13 continue to afford the material in question the level of protection to which it is
14 entitled under the Producing Party's designation until the Court rules on the
15 challenge.
16
17

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19
20 7.1 Basic Principles. A Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a Non-Party in connection with this
22 Action only for prosecuting, defending, or attempting to settle this Action. Such
23 Protected Material may be disclosed only to the categories of persons and under
24 the conditions described in this Order. When the Action has been terminated, a
25 Receiving Party must comply with the provisions of section 13 below (FINAL
26 DISPOSITION).
27
28

1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.
4

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
6 otherwise ordered by the court or permitted in writing by the Designating Party, a
7 Receiving Party may disclose any information or item designated
8 “CONFIDENTIAL” only to:
9

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
11 as employees of said Outside Counsel of Record to whom it is reasonably
12 necessary to disclose the information for this Action;
13

14 (b) the officers, directors, and employees (including House Counsel) of the
15 Receiving Party to whom disclosure is reasonably necessary for this Action;
16

17 (c) Experts (as defined in this Order) of the Receiving Party to whom
18 disclosure is reasonably necessary for this Action and who have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
20

21 (d) the court and its personnel;

22 (e) court reporters and their staff;

23 (f) professional jury or trial consultants, mock jurors, and Professional
24 Vendors to whom disclosure is reasonably necessary for this Action and who have
25 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
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1 (g) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information;

3 (h) during their depositions, witnesses, and attorneys for witnesses, in the
4 Action to whom disclosure is reasonably necessary provided: (1) the deposing
5 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
6 they will not be permitted to keep any confidential information unless they sign the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
8 agreed by the Designating Party or ordered by the court. Pages of transcribed
9 deposition testimony or exhibits to depositions that reveal Protected Material may
10 be separately bound by the court reporter and may not be disclosed to anyone
11 except as permitted under this Stipulated Protective Order; and
12

13 (i) any mediator or settlement officer, and their supporting personnel,
14 mutually agreed upon by any of the parties engaged in settlement discussions.
15

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18 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
19 **IN OTHER LITIGATION**
20

21 If a Party is served with a subpoena or a court order issued in other litigation
22 that compels disclosure of any information or items designated in this Action as
23 “CONFIDENTIAL,” that Party must:
24

25 (a) promptly notify in writing the Designating Party. Such notification shall
26 include a copy of the subpoena or court order;

27 (b) promptly notify in writing the party who caused the subpoena or order to
28

1 issue in the other litigation that some or all of the material covered by the subpoena
2 or order is subject to this Protective Order. Such notification shall include a copy
3 of this Stipulated Protective Order; and
4

5 (c) cooperate with respect to all reasonable procedures sought to be pursued
6 by the Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served
8 with the subpoena or court order shall not produce any information designated in
9 this action as “CONFIDENTIAL” before a determination by the court from which
10 the subpoena or order issued, unless the Party has obtained the Designating Party’s
11 permission. The Designating Party shall bear the burden and expense of seeking
12 protection in that court of its confidential material and nothing in these provisions
13 should be construed as authorizing or encouraging a Receiving Party in this Action
14 to disobey a lawful directive from another court.
15
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17

18 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
19 PRODUCED IN THIS LITIGATION
20

21 (a) The terms of this Order are applicable to information produced by a
22 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
23 produced by Non-Parties in connection with this litigation is protected by the
24 remedies and relief provided by this Order. Nothing in these provisions should be
25 construed as prohibiting a Non-Party from seeking additional protections.
26
27
28

1 (b) In the event that a Party is required, by a valid discovery request, to
2 produce a Non-Party's confidential information in its possession, and the Party is
3 subject to an agreement with the Non-Party not to produce the Non-Party's
4 confidential information, then the Party shall:
5

6 (1) promptly notify in writing the Requesting Party and the Non-Party that
7 some or all of the information requested is subject to a confidentiality agreement
8 with a Non-Party;
9

10 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
11 Order in this Action, the relevant discovery request(s), and a reasonably specific
12 description of the information requested; and
13

14 (3) make the information requested available for inspection by the Non-
15 Party, if requested.
16

17 (c) If the Non-Party fails to seek a protective order from this court within
18 14 days of receiving the notice and accompanying information, the Receiving
19 Party may produce the Non-Party's confidential information responsive to the
20 discovery request. If the Non-Party timely seeks a protective order, the Receiving
21 Party shall not produce any information in its possession or control that is subject
22 to the confidentiality agreement with the Non-Party before a determination by the
23 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
24 expense of seeking protection in this court of its Protected Material.
25
26

27 10.UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL
28

1 If a Receiving Party learns that, by inadvertence or otherwise, it has
2 disclosed Protected Material to any person or in any circumstance not authorized
3 under this Stipulated Protective Order, the Receiving Party must immediately (a)
4 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
5 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
6 the person or persons to whom unauthorized disclosures were made of all the terms
7 of this Order, and (d) request such person or persons to execute the
8 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
9 A.

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13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
14 PROTECTED MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain
16 inadvertently produced material is subject to a claim of privilege or other
17 protection, the obligations of the Receiving Parties are those set forth in Federal
18 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
19 whatever procedure may be established in an e-discovery order that provides for
20 production without prior privilege review. Pursuant to Federal Rule of Evidence
21 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
22 of a communication or information covered by the attorney-client privilege or
23 work product protection, the parties may incorporate their agreement in the
24 stipulated protective order submitted to the court.
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1 12.MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.
4

5 12.2 Right to Assert Other Objections. By stipulating to the entry of this
6 Protective Order no Party waives any right it otherwise would have to object to
7 disclosing or producing any information or item on any ground not addressed in
8 this Stipulated Protective Order. Similarly, no Party waives any right to object on
9 any ground to use in evidence of any of the material covered by this Protective
10 Order.
11

12 12.3 Filing Protected Material. A Party that seeks to file under seal any
13 Protected Material must comply with Civil Local Rule 79-5. Protected Material
14 may only be filed under seal pursuant to a court order authorizing the sealing of the
15 specific Protected Material at issue. If a Party's request to file Protected Material
16 under seal is denied by the court, then the Receiving Party may file the information
17 in the public record unless otherwise instructed by the court.
18
19
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21 13.FINAL DISPOSITION

22 After the final disposition of this Action, as defined in paragraph 4, within
23 60 days of a written request by the Designating Party, each Receiving Party must
24 return all Protected Material to the Producing Party or destroy such material. As
25 used in this subdivision, "all Protected Material" includes all copies, abstracts,
26 compilations, summaries, and any other format reproducing or capturing any of the
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Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: September 16, 2015

/s/ Lewis N. Levy

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Attorneys for Defendant

FOR GOOD CAUSE SHOWN, IT
IS SO ORDERED.

DATED: September 21, 2015



Judge Patrick J. Walsh
United States Magistrate Judge

Attestation Regarding Signatures

I, Lewis Levy, attest that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

DATED: September 16, 2015

By: /s/ Lewis Levy
Lewis Levy

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on [date] in the case of *AFM v. Paramount Pictures Corporation*, 2:15-cv-04302-
DMG-PJW. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____ [print
or type full name] of _____ [print or
type full address and telephone number] as my California agent for service of
process in connection with this action or any proceedings related to enforcement of
this Stipulated Protective Order.

1 Date: _____

2 City and State where sworn and signed: _____

3 Printed name: _____

4 Signature: _____

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